cert. denied

SUPREME COURT OF THE UNITED STATES

No. 348.—October Term, 1952.

Abraham J. Isserman, Petitioner, *v.* Ethics Committee of the Essex County Bar Association.	On Petition for a Writ of Certiorari to the Supreme Court of the State of New Jersey.

[April 6, 1953.]

Mr. Justice Black, with whom Mr. Justice Douglas agrees.

I would grant this certiorari. It involves an order of the New Jersey Supreme Court permanently disbarring petitioner from the practice of law in that state. The Court's order rests on petitioner's conviction of contempt in a federal district court, affirmed by this Court in *Sacher* v. *United States*, 343 U. S. 1. The record of the New Jersey proceedings before us leaves me with the belief that the state failed to afford petitioner the kind of a hearing required by the Due Process Clause of the Fourteenth Amendment. Although petitioner was allowed to appear before a local bar committee and to present a formal answer and make oral argument before the State Supreme Court, the full record persuades me that he was denied an adequate opportunity to confront witnesses against him and to offer evidence in his behalf. Instead of hearing evidence and making its own findings the state court's order was based on findings made by a federal district judge who had summarily convicted petitioner of contempt without a hearing. I believe that a lawyer is denied due process when he is expelled from his profession without ever having been afforded an opportunity to confront his accusers and present evidence to deny, explain or extenuate the charges against him. See *Ex parte Robinson*, 19 Wall. 505, 512-513, and *In re Oliver*, 333 U. S. 257.

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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 348

ABRAHAM J. ISSERMAN,
Petitioner,

vs.

ETHICS COMMITTEE OF THE ESSEX COUNTY BAR ASSOCIATION

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

LEONARD B. BOUDIN,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 348

ABRAHAM J. ISSERMAN,

Petitioner,

vs.

ETHICS COMMITTEE OF THE ESSEX COUNTY BAR ASSOCIATION

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

Petitioner, Abraham J. Isserman, prays that a writ of certiorari issue to review the orders of the Supreme Court of the State of New Jersey disbarring petitioner and denying his petition for rehearing.

Opinions Below

The opinions of the Supreme Court of New Jersey are reported at 9 N. J. 269 and 9 N. J. 316.

Jurisdiction

The order of the court below disbarring petitioner was entered on March 24, 1952 and his petition for a rehearing

was denied on April 28, 1952. On July 10, 1952, Mr. Justice Harold H. Burton of this Court entered an order extending the time for filing a petition for certiorari to and including September 24, 1952. Jurisdiction of this Court is invoked under 28 U. S. C., Section 1257 (3).

Questions Presented

1. Whether petitioner's disbarment without a hearing and an opportunity to offer evidence in his defense did not deprive him of liberty and property without due process of law and deny him the equal protection of the laws of the State of New Jersey, in violation of the Fourteenth Amendment to the Constitution of the United States.

2. Whether petitioner was not further denied due process and equal protection of laws by the reliance of the court below upon a conspiracy charge of which petitioner had been exculpated and upon the conduct of other persons.

3. Whether the disbarment was not arbitrary and without cause and in further violation of the Fourteenth Amendment since the petitioner was not guilty of moral turpitude, his conviction for contempt did not justify the extreme penalty of disbarment, and he had been exculpated by the federal court with jurisdiction over his conduct of many of the charges upon which the state court relied.

4. Whether the order below did not constitute an interference with the federal judiciary and its control over its Bar and with petitioner's right to practice before the federal courts, all in violation of the Fourteenth Amendment and of Article III of the Constitution of the United States.

Constitutional Provisions Involved

Amendment XIV, Section 1, to the Constitution of the United States reads as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citi-

> zens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article III, Section 1, of the Constitution reads, in relevant part, as follows:

> "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."

Statement

Petitioner, a member since 1923 of the Bar of the Supreme Court of New Jersey, herein referred to as the state court, was disbarred on March 17, 1952 by that court because of his conviction for contempt in *United States* v. *Sacher, et al.*, 9 F. R. D. 394, aff'd; *sub nom. Sacher* v. *United States*, 182 F. 2d 416, aff'd 343 U. S. 1 (R. 30). That conviction had been based upon his representation as attorney for certain of the defendants in *Dennis* v. *United States*, 341 U. S. 494, before the United States District Court for the Southern District of New York, herein referred to as the federal court. The state court acted upon the conviction for contempt, made no independent review of the evidence and rejected petitioner's prayer for a trial at which he could defend himself (R. 17, 28). It also considered matters dehors the record without prior notice to petitioner (R. 29).

The proceeding sought herein to be reviewed was instituted in the state court on November 17, 1949, following a report of the Ethics Committee of the Essex County Bar Association, which recited petitioner's federal conviction for contempt (R. 1). Attached to this report were the minutes of the only session held by the Committee (R. 55).

They show that the Committee had decided not to take any action against or make any recommendation pertaining to petitioner but merely to call the matter to the state court's attention and transmit petitioner's request for a deferment of any hearing by reason of his pending appeal from the conviction for contempt. Nevertheless, the Chief Justice of the state court, proceeding as if the Ethics Committee had made the customary report on the merits after plenary hearing, issued a rule to show cause why petitioner should not be disciplined (R. 2). On the return day the state court continued the rule to show cause without date (R. 21). On June 7, 1951 it issued a second rule to show cause (R. 3), in response to which, petitioner filed a motion for a continuance (R. 7) and an answer denying that the conviction for contempt was a ground for disbarment, requesting a hearing and an opportunity to present his defense therein (R. 4). The court continued the rule to show cause by reason of the pendency in this Court of an application for re-argument on the denial for certiorari in *Sacher* v. *United States, supra.*

Subsequent to this Court's decision affirming the judgment of conviction in the *Sacher* case, the said rule to show cause was made returnable on March 17, 1952 by oral notice. At that time petitioner filed his amended and supplemental answer, requesting again an opportunity to be heard and to offer evidence in mitigation and exculpation and other matters of defense (R. 11, 17), which the court received without opposition.

The state court, ignoring both the original and amended and supplemental answers, and the issues of fact raised therein, gave petitioner no hearing, made no reference of the matter and summarily disbarred petitioner on March 24, 1952 (R. 30). On April 3, 1952 petitioner filed his petition for rehearing (R. 32), which was denied by the state court on April 28, 1952 in an opinion and order (R. 77, 81).

The state court's judgment was based in large part upon petitioner's conviction on Count I in the federal contempt case, which alleged a conspiracy to obstruct justice. But the conviction on this Count was reversed by the Court of Appeals for the Second Circuit, *Sacher* v. *United States*, 182 F. 2d 416. And subsequently after hearing, petitioner was acquitted of the conspiracy charge in federal disciplinary proceedings (*In the Matter of Harold Sacher, et al.*, U. S. D. C., S. D. N. Y., M 19-66 (unreported).

The state court also relied upon the *comments* made by several federal judges upon the behavior of the various defense lawyers in the *Dennis* case. None of these comments was made by a court which reviewed evidence adduced in a hearing based on charges of professional misconduct. Thus one comment was that of the Chief Judge of the United States Court of Appeals in *Dennis* v. *United States, supra*, which involved the issue of the trial judge's misconduct, not that of the petitioner and the other lawyers. The remarks of the Second Circuit Judges in the *Sacher* case occurred in an appeal upholding the trial judge's right summarily to convict petitioner and others of contempt without a hearing. The remarks of Mr. Justice Jackson in the *Sacher* case were even further removed from a judicial determination on the merits since this Court had limited certiorari to the question of procedure. Finally, none of the quotations relied on made any distinction among the defense attorneys. As a result, each such attorney was invested with responsibility for the cumulative actions of all the other attorneys.[1]

While the proceedings before the state court were pending, petitioner was given elsewhere the first and only trial he has received to this day. Federal disbarment proceed-

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[1] The state court, as its opinion reveals, likewise attributed to petitioner all the acts of his associate counsel.

ings were instituted against him by two bar associations in the court where the contempt had occurred (R. 16, 38). Petitioner, upon the filing of his answer, alleging that his conduct in the *Dennis* case "was not unprofessional or deserving of the disciplinary action sought by the petition", was given a hearing by the federal court. (*In the Matter of Harold Sacher, et al., supra.*) Thereafter, United States District Judge Hincks acquitted petitioner of the charge of conspiracy and held that certain of the other contempt specifications upon which he had been convicted without hearing in the contempt proceeding did not warrant disciplinary action. The district judge upheld certain of the charges against petitioner and ordered that he be suspended from the bar of that court for the period of two years (R. 16-17, 19), from which ruling an appeal is now pending.

Reasons Why the Writ Should Be Granted

1. Petitioner was entitled to a hearing on the merits before he could be deprived of his professional status and livelihood. That is the mandate of the Fourteenth Amendment. A hearing in a constitutional sense means more than a right to oral argument. It comprehends an opportunity to offer evidence and to be heard in one's own defense. (*In re Oliver*, 333 U. S. 257; *Windsor* v. *McVeigh*, 93 U. S. 274, 277, 278.)

This principle has uniformly been applied to disciplinary proceedings. It has been repeatedly recognized that an attorney has a right to a hearing before he is disbarred. (*Bradley* v. *Fisher*, 80 U. S. (13 Wall.) 335, 355; *United States* v. *Hicks, In re Ewell*, 37 F. 2d 289 (C. A. 9th); *In re Noell*, 83 F. 2d 5 (C. A. 8th, 1937 aff'g), 21 Fed. Sup. 379 (D. C. E. D. Mo.) 1937; *Louisiana State Bar Association* v. *Connally*, 206 La. 883, 20 So. (2d) 168.

The state court itself recognized this principle both by citing *Ex Parte James S. Robinson,* 19 Wall. 513 (1874), and by asserting that petitioner had received the requisite hearing.

But petitioner had no such hearing either in fact or in a constitutional sense. His appearance by counsel before the Ethics Committee on November 3, 1949 was not a trial on the merits. His counsel pointed out that "any inquiry, which you might now make here, would seem to be premature" because the conviction for contempt had been appealed (R. 57) and that, he had "not yet been served with any charges" (R. 56). The Committee referred to a future decision as to "whether the matter is one in which we should have a formal hearing" (R. 65). It contemplated the issuance of "a complaint" (R. 64, 67), and stated that "if this Committee were to proceed with a hearing [that] you would want to introduce the entire record and further proof in order to challenge the fact of guilt and have this Committee try the question of contempt" (R. 69). At the close of the hearing, the Committee indicated that the state court might return the matter to it with instructions to proceed formally and that such "formal action would be in the nature of a complaint and an opportunity to be heard" (R. 72). The Committee's conclusion was stated by its Chairman as follows:

> "Mr. Unger, the Committee has concluded that it will forward to the Supreme Court a record consisting of the contempt certificate, the order of contempt, a copy of the notice of appeal—if you will leave us one of those—and a copy of the order staying the execution of the order of contempt—if you will provide us with one of those—together with a report in which it will be stated that this matter has come to our attention and we are, therefore, referring it to the Court for such action, if any, as it may desire to take. We will in our report call attention to the fact that the

> matter has been appealed from and that an appeal is pending and that there is a stay and it is scheduled presently by the Court of Appeals on December 12" (R. 73).

In response to counsel's specific inquiry, the Chairman added:

> "Yes. There will be no hearing before the Committee unless we are directed to conduct one by the Court, in which event you will, of course, receive appropriate notice." (R. 76.)

Under these circumstances, the suggestion of the state court that petitioner "had his opportunity to be heard before the Ethics Committee . . ." (R. 28) is directly contrary to the uncontroverted facts which the state court had before it.

Petitioner challenges this finding, as he has a right to do, since the preservation of his constitutional rights depends upon its examination by this court, which under the circumstances has the "solemn duty to make independent inquiry and determination of the disputed facts". (*Pierre* v. *State of Louisiana,* 306 U.S. 354, 358 (1939).

Nor did petitioner have a hearing before the state court itself. He requested such a hearing in both his original and supplemental answers. The court's opinion recognized that he had insisted on "an adequate opportunity to be heard and to present evidence on other matters in his defense on the issues before the court in this proceeding." (R. 22, 23). On his last appearance before the state court petitioner filed and the court accepted his amended and supplemental answer, which raised issues of fact by way of defense and extenuation on which he was never given the opportunity to present evidence.

The state court denied his request for a hearing on four grounds: (1) that he had had the opportunity to be

heard before the Ethics Committee; the contrary is shown by the Committee's report; (2) that he availed himself of that opportunity to "the extent of having his counsel offer certain evidence" (R. 28); this "evidence" consisted solely of papers showing the pendency of an appeal from the conviction for contempt and was submitted in support only of the motion for a deferment of a hearing on the merits (R. 73); (3) that on a certain date he had failed to request a hearing; the Record shows that he made a clear request for a hearing upon every appearance before the court; (4) that there is "no occasion" to look behind his conviction for contempt (R. 28). But New Jersey does look behind a criminal conviction, even where, unlike here, moral turpitude is involved. See, e.g., *In re Lieb*, 1 N. J. 567, 64 Atl. 2d, 880 (1949).

In its opinion in this very case the state court acknowledged that it was bound by *Ex Parte James S. Robinson, supra*, and that "conviction for contempt may not always necessitate or justify disciplinary proceedings . . ." and that it had a "constitutional duty to take such disciplinary action as in the circumstances may be warranted" (R. 25). Accordingly, in denying petitioner the right to show the "circumstances" of the conviction for contempt, in order to determine the appropriate "disciplinary action", if any, the state court not only denied petitioner due process but the equal protection of its laws. Further, it aggravated the arbitrary nature of its action by relying upon a summary conviction for contempt and by disregarding the subsequent evaluation of petitioner's conduct by a federal court after hearing.

Petitioner has a constitutional right to a hearing even if he could show no practical advantage resulting from one. But petitioner can show both the kind of hearing to which he was entitled and the benefits which are derived from

judicial consideration of the facts as against arbitrary action. Such a hearing was given him in the federal disciplinary proceedings instituted against him (*In re Harold Sacher, et al., supra*). The best description of its nature appears in the following excerpt from the opinion in that case:

> "Such being the issues raised by the petition and answer, the record of fact was made at the hearing on the merits, which was held on December 20, 1950. This was conveniently accomplished by the receipt in evidence of the 21 volumes of the record as printed for purposes of the appeal to the Court of Appeals from the judgment of conviction in the *Dennis* case. This voluminous record was offered in evidence by the petitioners and received in evidence here without objection by the respondents: neither petitioners nor respondents offered other evidence. Thereupon the parties were fully heard in oral argument and thereafter written briefs were submitted. The respondents' brief was in substance joint and several; it comprised an aggregate of 722 typed pages and incorporated hundreds of printed pages from the Dennis record. The petitioners' briefs aggregated 55 printed pages. The last brief was received on or about April 1, 1951. The vast amount of detailed material thus presented for perusal, study and analysis—not to mention the obligations attaching to full-time judicial service in a busy district —will sufficiently explain, I trust, the time, seemingly unconscionable, for the completion of this memorandum of decision."

The result was petitioner's absolution from the critical conspiracy charges and in part from certain of the specifications in the contempt certificate which the state court had accepted as conclusive.[2] In imposing a suspen-

[2] The specifications are summarized in the amended and supplemental answer herein (R. 12-14) and in the Record before this Court in the *Sacher* case. Today, three years after the heat of the *Dennis* trial, petitioner's

sion, the Court recognized petitioner's basic fitness to continue the practice of law. One could hardly find a more dramatic illustration of the reasons behind the procedural protections of the Constitution.

2. In disbarring petitioner, New Jersey denied him "the equal protection of the laws". Disbarment proceedings in New Jersey are instituted upon notice and afford the lawyer involved an opportunity to defend. See, e.g., *In re Ries*, 131 N. J. L. 559, 37 Atl. 2d 417 (1944); *In re P.*, 111 N.J.L. 569, 169 Atl. 25; *In re Trimble*, 85 N.J. Eq. 348, 95 Atl. 863; *In re Smith*, 84 N.J. Eq. 252, 94 Atl. 39; *In re Cosey*, 84 N.J. Eq., 343, 94 Atl. 54; *In re Young*, 75 N.J.L. 83, 67 Atl. 717; *In re McDermit*, 63 N.J.L. 476, 43 Atl. 685. No case has come to our attention in which a member of the New Jersey Bar has been disbarred without hearing, in the face of a demand, as here, for a hearing and opportunity to defend. Accordingly, New Jersey has not only deprived petitioner of his professional status and right to earn a livelihood in violation of the due process clause, but it has denied him a fundamental right enjoyed by other members of the Bar.

3. The state court's action further denied petitioner due

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counsel believes it literally to be an act of cruelty to use the six incidents occurring over a period of nine months as a reason for destroying an honorable career of nearly three decades. Thus, Specification VI involved nothing more than pressing a legal argument despite a court ruling, a familiar forensic practice. VII was based upon a statement that the court had misconstrued counsel's argument. XII was described by Judge Hincks as having been made in a lighter vein and without improper intent. XXVII was not sustained by Judge Hincks. XXXI consisted of making a 20-word objection which Judge Hincks held justified no disciplinary action taken by itself. XXXII consisted of orderly objections to the court's interrogation. One aspect of this was held by Judge Hincks to be improper; on the other, he ruled to the contrary. We have not attempted here, of course, to re-argue any of these matters, that being reserved for the appeal from the order in the federal disciplinary proceedings. Instead, this recitation indicates the nature of the incidents which have led the state court to end petitioner's career without any inquiry into exactly what had occurred.

process by relying principally upon a conspiracy theory from which he was exculpated (R. 23) and upon the conduct of a number of other attorneys. See *Cole* v. *Arkansas*, 333 U.S. 514.

The gravamen of the findings against petitioner is the conspiracy upon which the conviction for contempt was principally based. Absent this conspiracy, the complained of conduct consisted essentially of engaging in oral argument in violation of the trial judge's orders. The district judge who convicted petitioner of contempt stated that absent such a finding of conspiracy, he would have taken different action, 9 F.R.D. 394, 395. The report of the Ethics Committee to the state court was made prior to the reversal of the contempt conviction on the conspiracy count. The state court made formal reference in its order and opinion to the reversal on this point. But its opinion and the judicial quotations therein proceed upon the theory of conspiracy. Disbarment (particularly without hearing) based upon charges not upheld upon appeal and of which one is in fact acquitted after a hearing is plainly arbitrary and totally without cause. As such, it deprives petitioner of his constitutional right to a fair trial.

Further, the state court, in relying upon the remarks made by the various federal appellate judges, treated petitioner as if he had been guilty of all the specifications made against all of his colleagues in the *Dennis* case. For the remarks of the federal judges were primarily *obiter dicta* reflecting upon the cumulative activities of all the lawyers. They did not attempt to distinguish between the specifications against petitioner and those against the other lawyers.

But petitioner had a constitutional right to be tried exclusively upon charges relating to his own alleged misconduct. The state court had no right to ascribe the

activities of four other lawyers to petitioner and to conclude that petitioner should be punished for the cumulative conduct ascribed to all.

4. The disbarment was arbitrary and without cause. Petitioner was not guilty of moral turpitude and was exculpated by the only court which took testimony on the subject and which had jurisdiction over his conduct of many of the charges upon which the state court relied.

When petitioner finally had his federal disciplinary hearing before District Judge Hincks, he was able for the first time to defend himself against the conspiracy charge and to justify or explain various incidents with which he was charged. The result was to leave against his record little more than incidents of expressions of undue vigor or of arguments continued in the face of judicial instructions, often ambiguous, to the contrary. Judge Hincks who, alone of all the judges involved, had both read the full record and heard petitioner's explanations, concluded that petitioner should be suspended for two years, and stated that "his attitude as disclosed on the record and on his brief herein leaves room for reasonable expectation that the experience of discipline may have such restraining effect on his courtroom behavior that in the future he may be safely expected to exercise without abuse the privileges of membership in this Bar." Inherent in his opinion is the conclusion that petitioner was not guilty of moral turpitude or of course of a crime involving it. The law in New Jersey, as elsewhere, permits disbarment for moral turpitude or crime, not for any cause deemed sufficient by the disciplining court. See *In re Ries*, 131 N.J.L. 559, 37 Atl. 2d 417 (1944). Contempt *per se* is not a ground for disbarment in New Jersey. *In re P.*, 83 N. J. Eq., 390, 91 Atl. 326 (1914). Our examination of New Jersey case law does not reveal a single disbarment for contempt of court alone; instead, contempts have been followed by suspension; *In re Megill et al.*, 114

N. J. Eq. 604, 169 Atl. 501, or by fines; *In re Mindes*, 88 N. J. Law, 117, 95 Atl. 74[illegible] Even cases involving moral turpitude have been followed only by suspension. *In re Rosenkrans*, 84 N. J. Eq. 232, 94 Atl. 42; *In re Breidt*, 84 N. J. Eq. 222, 94 Atl. 214. Therefore, in disbarring petitioner, New Jersey not only denied him due process but the equal protection of its laws.

This Court has said that a state court's power to disbar "is not an arbitrary and despotic one" but one to be exercised "by a sound and just judicial discretion, whereby the rights and independence of the bar may be as scrupulously guarded and maintained by the court, as the rights and dignity of the court itself" (*Ex parte Secombe*, 60 U. S. 9. See also: *In re Fisher*, 179 F. 2d, 361 (C.A. 7), *cert. den.* 340 U. S. 825; *United States* v. *Hicks*, *supra*. The state court's action and its two opinions do not meet the constitutional test.

5. The state court's action has created a novel and important problem in federal-state judicial relations. Petitioner has been disbarred by the state court for his criticized representation of defendants under federal indictment. Had New Jersey given petitioner the hearing which he demanded, it would then have scrutinized his objections, arguments, exceptions, in fact the totality of his conduct, in the trial in *Dennis* v. *United States*, *supra*. The state court is not constitutionally entitled thus to supervise petitioner's obligations to court and client in a federal trial. If it were, every lawyer in a federal case would be governed in his actions not alone by the federal court's rulings and standards but by those which he must anticipate would be required by his state court. We submit that petitioner was not an emissary of New Jersey in his appearance before the federal court, but a member of the federal Bar subject in his conduct solely to the jurisdiction of the federal court. New

Jersey's concern with his federal court behavior would create another supervisory body over his conduct in interference with his representation of his client before the federal court and with the exclusive judicial power of the latter.

New Jersey's invasion of the federal area is emphasized in this case by Judge Hinck's evaluation of petitioner's conduct. If he had completely acquitted petitioner, it is not conceivable that New Jersey nevertheless could punish him. Why, then, can it presume drastically to increase the penalty? Surely, his censure and suspension do not in principle permit New Jersey's interference by state disbarment because it takes a different view than the federal court of petitioner's relationship with and conduct before that court.

The effect of New Jersey's overseership of petitioner's federal conduct is well illustrated in this case. Judge Hincks suspended petitioner from federal practice. But state disbarment can result in his federal disbarment. Rule 4, U.S.D.C., S.D.N.Y. Such proceedings have actually been commenced despite Judge Hincks' decision. New Jersey will thus have superseded the federal courts in determining petitioner's status in the federal bar.

6. The problems set forth above are of fundamental importance to petitioner and other members of the federal bar. This Court has issued its rule to show cause why petitioner should not be disbarred by it because of the action of the state court. While this Court is not bound by New Jersey's decree, (*Selling* v. *Radford*, 243 U. S. 46; *Ex Parte Tillinghast*, 4 Pet. 108) it will at least require petitioner to show that it violated his constitutional rights or should otherwise be disregarded. That issue can best be resolved by a review of New Jersey's action in this case. The same issue may be brought before this Court in the pending federal court proceedings to disbar him and in the ultimate review of a proceeding instituted by the Department of Justice to exclude

him from practice before the Board of Immigration Appeals and the Immigration and Naturalization Service.

Each of the attorneys involved in the *Dennis* case may be confronted by similar problems and, of course, all practitioners before the federal courts must be concerned over this new state court supervision of their conduct as members of the federal Bar and the summary methods used by the state court below in violation of established substantive and procedural law and the constitutional rights of members of the federal Bar.

Conclusion

Is there to be no end to petitioner's punishment without hearing for the same offense? Is each tribunal, state and federal, before which he has practiced entitled constitutionally to intervene and punish him for the same conduct, particularly when the federal court in which the actions occurred has determined the appropriate discipline? Has he forfeited every professional honor and means of livelihood as the result of six relatively minor incidents in a nine months' trial?

The heart of New Jersey's decision is petitioner's summary conviction for contempt. In the view of three members of this Court, the conviction was improper because petitioner was denied an opportunity to defend himself. But New Jersey has compounded both the injury and the invasion of petitioner's rights. Without the constitutional justification for a summary contempt adjudication, it has denied petitioner a hearing by declaring that the earlier conviction without hearing was conclusive. This, despite the fact that in the past it provided disciplinary hearings even to persons convicted *after trial.*

But even if petitioner had been given a hearing, New Jersey had no right to deprive him of his profession and livelihood because of a few brief occurrences in the course

of a long trial, from many of which he was either completely or partially exculpated after a federal disciplinary trial. Whatever may be the extraordinary power of a judge to punish for contempt, these acts could not possibly justify the destruction of an honorable career of twenty-nine years under the guise of discipline.

It is therefore respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

LEONARD B. BOUDIN,
Attorney for Petitioner.

September 22, 1952.

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HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

No. 348.

ABRAHAM J. ISSERMAN,
Petitioner,

vs.

ETHICS COMMITTEE OF THE ESSEX COUNTY BAR ASSOCIATION,
Respondent.

BRIEF FOR RESPONDENT.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

No. 348.

ABRAHAM J. ISSERMAN,
Petitioner,

vs.

ETHICS COMMITTEE OF THE ESSEX COUNTY BAR ASSOCIATION,
Respondent.

BRIEF FOR RESPONDENT.

Statement.

Petitioner, Abraham J. Isserman, was admitted as an attorney-at-law of the State of New Jersey in the June 1923 Term of the New Jersey Supreme Court, and as a counsellor-at-law in the October 1926 Term of said Court (R. 1).

(a) Federal court proceedings:

At the conclusion of the trial of the 11 communist leaders on October 14, 1949 in the United States District Court for the Southern District of New York (*United States* v. *Foster, et al.*, 83 F. Supp. 197 (1949); on appeal, *United States* v. *Dennis, et al.*, 183 F. 2d 201 (C. A. 2nd Cir., 1950); 341 U. S. 494 (1951)) Isserman, who represented several

defendants, was adjudged guilty of criminal contempts of court by the Honorable Harold R. Medina, D. C. J., for his contemptuous conduct during the course of said trial. The Order on Contempt, dated October 14th, 1949, in part, reads:

> "It is Adjudged that the defendant is guilty of contempts of court as specified in the accompanying certificate, to wit: Specifications I, VI, VII, XII, XXVII, XXXI, XXXII.
>
> "It is Adjudged that the defendant is sentenced to imprisonment for a period of four months on each contempt, and that the aforesaid sentences shall be served concurrently."

The Contempt Certificate, pursuant to Rule 42(a), Federal Rules of Criminal Procedure, is reported in full in the appendix to *United States* v. *Sacher*, 182 F. 2d 416 (C. A. 2nd Cir., 1950), starting at page 430.

The criminal contempt convictions were affirmed, except as to Specification I, and certiorari denied (341 U. S. 952 (1951)). Subsequently, reargument was granted (342 U. S. 858 (1951)) and the criminal contempt convictions were again affirmed on March 10, 1952 (343 U. S. 1).

(b) State court proceedings:

By notice personally served on him in New York City, Isserman was requested to appear on November 3, 1949, before the Ethics Committee of the Essex County Bar Association (which committee is now known and designated as the Essex County Ethics and Grievance Committee). He did not appear in person, but was represented by counsel, who sought a continuance until the disposition of

his appeal from the criminal contempt convictions in the Court of Appeals, Second Circuit. The Committee (R. 1) forwarded a copy of the Order on Contempt and the Contempt Certificate, together with such documents as were offered in evidence by Isserman's counsel, to the State Supreme Court "for such action, if any, as it may deem necessary and proper under the circumstances."

Not until after the affirmance of petitioner's criminal contempt convictions by the Court of Appeals, Second Circuit (182 F. 2d 416), did the State court issue and serve its order dated April 24th, 1950, returnable May 8, 1950, directing petitioner to show cause "why he should not be disbarred, or otherwise disciplined as this court may deem necessary and proper under the circumstances" (R. 2). Further action was again held in abeyance pending the determination by the Supreme Court of the United States of petitioner's application for a writ of certiorari to review his criminal contempt convictions. Upon certiorari being denied (341 U. S. 952) the State court issued another order, dated June 7, 1951, returnable June 18, 1951 (R. 3), directing Isserman to show cause why he should not be disbarred or otherwise disciplined. Petitioner filed an Answer (R. 4) and a Notice of Motion for a further continuance (R. 7). After the matter was fully heard and argued in open court on the return date, June 18th, 1951, the show cause order was continued until disposition of his application for re-argument in the Supreme Court of the United States, and pending such disposition he was suspended from the practice of law in New Jersey (R. 4).

On March 10, 1952, the Supreme Court of the United States affirmed petitioner's conviction (343 U. S. 1) and

after notice the matter was again fully heard and argued in open court on March 17th, 1952, and the State court on March 24th, 1952, in an opinion (R. 21) by Mr. Chief Justice Vanderbilt, (*in re: Isserman*, 9 N. J. 269, 87 A. 2d 903), determined to strike petitioner's name from the rolls of attorneys and counsellors-at-law of the State of New Jersey, and an appropriate order was entered (R. 30).

Petitioner filed a petition for re-hearing in the State court (R. 32). The State court denied his petition for re-hearing (R. 81) for the reasons stated in its opinion (R. 77) filed April 28, 1952 (*in re: Isserman*, 9 N. J. 316, 88 A. 2d 199).

(c) Prior disciplinary proceedings:

Petitioner was the subject of a report of the State Board of Bar Examiners, which recommended he be suspended for a period of two years in that, as stated *in re: Isserman*, 6 N. J. Misc. R. 146 (1928), 140 A. 253:

> "Isserman was convicted in the Court of General Quarter Sessions of Hudson County for a violation of the second clause of section 115 of the Crimes Act, in that he had carnal intercourse with the prosecutrix mentioned in the indictment, on June 7th, 1925. She was born on August 14th, 1909, and, therefore, on June 7th, 1925, she was still within the age fixed by the statute for the protection of female children against vice."

The State court concluded that he be suspended for a period of six months for the reasons stated in its opinion. Petitioner's petition for re-hearing (R. 51) alleges he was granted a full pardon by the Court of Pardons on October 9, 1953.

Constitutional and Statutory Provisions and Rules Involved.

The 1947 New Jersey Constitution, Art. 6, § 2, Par. 3:

"The Supreme Court shall make rules governing the administration of all courts in the State and, subject to law, the practice and procedure in all courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted."

New Jersey Revised Statutes 2:20-1 prior to its amendment, effective January 1, 1952 (N. J. S. 2A:13-1):

"Every counselor, solicitor or attorney at law, shall, before he is permitted to practice in any court of this state, take and subscribe in open court, the following oath:

'I, ..., do solemnly promise and swear, that I will faithfully and honestly demean myself in the practice of attorney (or of counselor or solicitor as the case may be), and will execute my office according to the best of my ability and understanding. So help me God.'"

The Rules of the Supreme Court of New Jersey:

Rule 1:7-6. Canons of Ethics.

"The Canons of Professional Ethics, and the Canons of Judicial Ethics, adopted by the American Bar Association and now in effect, shall govern the conduct of the judges and the members of the bar of this State . . ."

Rule 1:8-17. Residence; Unlawful Practice.

"(a) No attorney of this Court, not actually residing in this State, shall appear or act as attorney

of record in any cause in any of the courts of this State.

(b) No attorney or other person not residing in this State, or person not regularly licensed and enrolled, shall practice in the name of any attorney in this State, nor shall any attorney thereof permit another so to practice, on pain of being stricken from the roll."

Rule 1:9-5. Discipline and Disbarment.

"(a) Presentments, or affidavits presented to the court, directly for the purpose of obtaining an order to show cause why the name of an attorney should not be stricken from the roll shall not be filed without an order of the court; and no such order to show cause, if allowed, shall be actually entered until the court by special order so directs; and whenever such an order, not entered, shall be discharged, no entry thereof shall be made and no papers shall be filed.

(b) No person who shall be disbarred or suspended as an attorney-at-law shall, during the period of such disability, be permitted to practice as a counsellor-at-law."

Canons of professional ethics:

1. **The Duty of the Lawyer to the Courts.**

"It is the duty of the lawyer to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such

cases, but not otherwise, such charges should be encouraged and the person making them should be protected."

29. Upholding the Honor of the Profession.

"Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member of the Bar who has wronged his client. The counsel upon the trial of a cause in which perjury has been committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities. The lawyer should aid in guarding the Bar against the admission to the profession of candidates unfit or unqualified because deficient in either moral character or education. He should strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice."

32. The Lawyer's Duty in Its Last Analysis.

"No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render any service or advice involving disloyalty to the law whose ministers we are, or disrespect to the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strict-

> est principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen."

ARGUMENT.

POINT I.

The requirements of due process are fully met by due notice and an opportunity to be heard, all of which were accorded the petitioner.

Petitioner alleges he was denied a hearing on the merits, an opportunity to offer evidence, and to be heard. Not so. An examination of the record will show he was heard on the merits and had ample opportunity to offer evidence. He personally never appeared before the Committee or the State Supreme Court. On the return date of each show cause order he was represented by counsel. His counsel was heard by the Committee, offered evidence, and on two occasions was heard by the State court, and any evidence proferred by him was received and considered.

Although petitioner was convicted on October 14, 1949, the first show cause order was returnable May 8, 1950 (R. 2), it was not until after the second show cause order (R. 3) was issued, returnable June 18, 1951, that petitioner

filed an answer (R. 4) and a 21-page brief, which concluded with the request that "The charges herein should be dismissed." That answer alleged petitioner was so busy attending to his clients' affairs that he was unable to adequately prepare his defense, and that "to compel respondent to proceed . . . would be to deny the respondent due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution, and to proceed against him by way of discipline under such circumstances would be to deprive him of property without due process of law as guaranteed by said amendment." It will be noted petitioner recognized the correctness of the State court's procedure and that he did not allege he was denied the opportunity to present evidence in his behalf but only desired a continuance to prepare his defense, and if such additional time was granted it would not be violative of due process. Additional time was granted in that the Order of Suspension (R. 4) continued the matter until the disposition of his application to this Court for reargument. It was not until after this Court finally affirmed the criminal contempt convictions that petitioner in his Amended and Supplemental Answer (R. 11), filed on March 17th, 1952, alleged he was denied a hearing and deprived of due process. The opinion of Mr. Chief Justice Vanderbilt (R. 21) in the State court fully sets forth the details of this protracted disciplinary proceeding, and is a complete answer in denial of petitioner's present contentions. Petitioner filed a petition for rehearing in the State Court (R. 32) and the allegations thereof are likewise fully and completely answered in the per curiam opinion (R. 77) of the State court denying rehearing.

Petitioner's conviction of criminal contempts under Rule 42(a), Federal Rules of Criminal Procedure, is a conviction of a criminal offense.

> *Pendergast* v. *United States*, 317 U. S. 412 (1942);
> *Fisher* v. *Pace*, 336 U. S. 155, 159-160 (1949);
> *United States* v. *United Mine Workers of Amer.*, 330 U. S. 258, 295 (1947).

Criminal contempts are offenses against organized society in that they impair the dignity and authority of the court, and tend to obstruct the due administration of justice, and tend to bring the court into disrepute and disrespect. *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418 (1911); *Staley* v. *South Jersey Realty Co.*, 83 N. J. Eq. 300 (E. & A., 1914), 90 A. 1042. A criminal contempt is a public wrong; it is a misdemeanor. *Zimmerman* v. *Zimmerman*, 12 N. J. Super. 61 (App. Div., 1950), 79 A. 2d 59.

The State court had before it petitioner's record of conviction and in the exercise of its inherent and constitutional power to discipline one of its officers, after due notice and hearing, it judicially determined petitioner by reason of his conviction was no longer worthy or fit to continue as a member of the Bar of New Jersey.

To here grant petitioner a review of his disbarment by the State court would be tantamount to a review by this court of his conviction of criminal contempts, a review which heretofore has been fully accorded him by this court.

Further, to grant petitioner the review which he here seeks would be an open sesame for every disbarred lawyer to seek a like review. *Thompson* v. *State*, 35 S. E. 2d 306, 308, 72 Ga. App. 852; transferred 33 S. E. 2d 903; 199 Ga.

250, cert. den. 67 S. Ct. 44, 329 U. S. 714, 91 L. Ed. 620 (1946). Petitioner's guilt has been determined, and affirmed on appeal. He is not entitled to a retrial in the State courts, nor a retrial here.

Disciplinary proceedings need not comply with all the formalities of process or other trial procedure. The informality by which action is taken, the charges made, or notice is given to the attorney charged with misconduct, will not invalidate the proceedings. *In re: Claiborne,* 119 F. 2d 647 (C. A. 1st, 1941); *Ex parte Wall,* 107 U. S. 265 (1882); *Randall* v. *Brigham,* 74 U. S. 523, 540 (1868). Particularly is this so when the evidence against the attorney is entirely documentary. Here, petitioner had full knowledge of the entry and contents of the Order on Contempt and the Contempt Certificate, and all subsequent proceedings.

In *Randall* v. *Brigham, supra,* at page 540, the court said:

> "It is not necessary that proceedings against attorneys for malpractice, or any unprofessional conduct, should be founded upon formal allegations against them. Such proceedings are often instituted upon information developed in the progress of a cause; or from what the court learns of the conduct of the attorney from his own observation. Sometimes they are moved by third parties upon affidavit; and sometimes they are taken by the court upon its own motion. All that is requisite to their validity is that, when not taken for matters occurring in open court, in the presence of the judges, notice should be given to the attorney, of the charges made, and opportunity afforded him for explanation and defense. The man-

> ner in which the proceeding shall be conducted, so that it be without oppression or unfairness, is a matter of judicial regulation."

In *Ex parte Wall, supra*, at page 273, the court said:

> "It is laid down in all the books in which the subject is treated, that a court has power to exercise a summary jurisdiction over its attorneys to compel them to act honestly towards their clients, and to punish them by fine and imprisonment for misconduct and contempts, and, in gross cases of misconduct, to strike their names from the roll. If regularly convicted of a felony, an attorney will be struck off the roll as of course, whatever the felony may be, because he is rendered infamous. If convicted of a misdemeanor which imports fraud or dishonesty, the same course will be taken. He will also be struck off the roll for gross malpractice or dishonesty in his profession, or for conduct gravely affecting his professional character."

In view of the facts of this case, petitioner's disbarment by the State court was not in anywise arbitrary, without cause, or violative of due process.

POINT II.

Disbarment of an attorney by a State court is not an interference with any federal judicial function.

In paragraphs 5 and 6, petitioner contends his disbarment by the State court constitutes an interference with the federal judicial function in that if a hearing had been accorded him by the State court the latter would thereby be scrutinizing and supervising petitioner's conduct and his

obligation to the federal court and to his client in a federal case. This argument runs contra to his contention he was denied an opportunity to be heard, for now he states that had he been heard such hearing would be an unwarranted supervision of the conduct of members of the federal bar. The fallacy of the argument is apparent. The State court in disciplining members of its bar does not in anywise attempt to interfere with any federal judicial function. The State court has no concern with the disciplinary action taken, or to be taken, by the federal courts, either the District Courts, or the Supreme Court of the United States, or any federal administrative body, as a result of petitioner's disbarment by the State court. The fact that his admission to practice before the federal courts was predicated upon his admission to the bar of New Jersey, and that such right to practice in the federal courts, by its rules, will be terminated by his disbarment in New Jersey, is not a valid reason for this court to review the disciplinary proceedings in the State court. Nor, is such a disciplinary proceeding in any sense a supervision by the State court of petitioner's conduct in the federal courts. The admission to practice and the disciplining of its members is a function of and is under the control of each court, state or federal, acting independently, and is not an encroachment by one on the rights and duties of the other. As was said in *Bradwell* v. *Illinois*, 83 U. S. 130, 139 (1872), 21 L. Ed. 442:

> "... the right to control and regulate the granting of a license to practice law in the courts of a state is one of those powers which are not transferred for its protection to the Federal Government, and its exercise is in no manner governed or controlled by citizenship of the United States in the party seeking such license."

The right or license to practice law is not a "property right", nor is it a "privilege" or an "immunity" within the protection of the Fourteenth Amendment. *Brents* v. *Stone*, 60 F. Supp. 82 (D. C. E. D. Ill., 1945); *Emmons* v. *Smith* (D. C. Mich., 1944), 58 F. Supp. 869, aff'd 149 F. 2d 869, cert. den. 326 U. S. 746; *Mitchell* v. *Greenough*, 100 F. 2d 184, cert. den. 306 U. S. 659; *Bradwell* v *Illinois, supra*; *In re*: *Lockwood*, 154 U. S. 116.

In *Selling* v. *Radford*, 37 S. Ct. 377, 243 U. S. 46, 61 L. Ed. 585, Ann. Cases 1917D, 569 (Sup., 1917), petitioners, members of the Bar of Detroit, Michigan, sought respondent's disbarment in the United States Supreme Court. Respondent, admitted to practice before the United States Supreme Court based upon his admission in Michigan, was disbarred by Michigan, but respondent continued to hold himself out as a practicing lawyer claiming he was still a member of the Bar of the United States Supreme Court. The court held it had no authority to re-examine or reverse, as a reviewing court, the action of the supreme court of Michigan in disbarring a member of the Bar of the courts of that state for personal and professional misconduct.

Each court, state or federal, and each administrative body, before which an attorney is entitled to practice, acting separately and independently, has the right to determine for itself petitioner's fitness to continue practicing before it, and such determination is not in the sense of an additional punishment. Here, the State court determined that Isserman's fitness to continue as a officer of the State court had terminated in that:

> "* * * the nature of his conviction was so closely related to and so potentially destructive of the judicial process as to require a termination of his status as an officer of this court." (R. 80).

Petitioner would now have this court believe his criminal contempt convictions were based upon "a few brief occurrences" or "six relatively minor incidents". Neither the passage of time nor the petitioner's attempted minimizing and making light of his contumacious conduct before the trial judge should now blur the picture presented by the trial court's contempt certificate of petitioner's "obstructive tactics and impudent charges" (Judge Augustus N. Hand, 182 F. 2d 416, 430), "outrageous conduct", "crude antics" (Judge Frank, ibid. p. 454), and "abominable" resistance (Judge Clark, ibid. p. 463). These are not off-hand random comments, but are the considered conservative comments made by judges who reviewed the record, and as a result thereof have found petitioner's conduct, and those associated with him, lacking in that propriety and dignity which should characterize the conduct of a member of our honored profession.

Petitioner's conduct was characterized by Judge Hincks, D. C. J., after his examination of the entire 21 volume record in the *Dennis* case, in the following language:

> "As to Mr. Isserman, I find that as charged in Par. 14, he, too, improperly disregarded warnings of the court concerning time-consuming tactics by persistence in making long arguments and by the needless reiteration of objections by others. * * * Certainly this conduct involved reckless disregard of the need to avoid waste of trial time: the frequency of such conduct, on the whole, fairly warrants a conclu-

> **sion that it was in wilful disregard of the court's warning against unnecessary delays. Such is my finding. And the incident reported on pages 1134-5 of the record was insolent and provocative, I think intentionally so. * * *'' (*In the Matter of Sacher and Isserman*, Docket M19-66, not officially reported).**

and suspended Isserman from practicing in the Southern District of New York for a period of 2 years. It will be noted, however, such suspension was ordered prior to his disbarment in New Jersey, and prior to this Court's affirmance of petitioner's six convictions for contempt. The disciplinary action taken in the Southern District is neither binding nor controlling upon the State court. The petition filed by the New York bar associations in the Southern District of New York, as to Isserman's conduct, stated not only the six specific acts of alleged misconduct, but 23 additional instances of alleged misconduct. The joint answer which he and Sacher filed thereto Judge Hincks found:

> '' . . . contained no denial of the factual matter charged in the petition, in effect admitted that their conduct was as reported in the *Dennis* record and as charged in the petition, but left room for their contention that the conduct specified was not unprofessional or deserving of the disciplinary action sought by the petition. As to the direct charges of misconduct contained in Paragraphs 16 and 18, the respondents' answer contains no denial but only the assertion that the acts of misconduct charged as misconduct, though not denied, 'do not, in context, evidence unfitness on the part of either of the respondents for professional practice.' ''

Inasmuch as petitioner admits the contents of the *Dennis* record, he must likewise admit the contents of the contempt

hich was made up from the *Dennis* record. The
considered the contents of the contempt certifi-
idence submitted by petitioner before the Com-
tioner's answer, his amended and supplemental
petition for rehearing, and oral argument in
on two different occasions. The State court
petitioner's conduct merited disbarment. That
on as to the nature of the discipline to be im-
red from that of Judge Hincks is immaterial
ere subject to review.

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Conclusion.

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Dated: N ember 6, 1952.
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FREDERICK C. VONHOF,
Counsel for Respondent,
Essex County Ethics and Grievance Committee,
11 Commerce Street,
Newark 2, New Jersey.

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Supreme Court of the United States

OCTOBER TERM, 1952

No. 348

ABRAHAM J. ISSERMAN,

Petitioner,

vs.

ETHICS COMMITTEE OF THE ESSEX COUNTY BAR ASSOCIATION.

Petition for a Writ of Certiorari to the Supreme Court of New Jersey

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MOTION OF NATIONAL LAWYERS GUILD FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

MURRAY A. GORDON,
401 Broadway,
New York, N. Y.
Attorney for National Lawyers Guild.

Supreme Court of the United States

OCTOBER TERM, 1952

No. 348

ABRAHAM J. ISSERMAN,
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v.

ETHICS COMMITTEE OF THE ESSEX COUNTY BAR ASSOCIATION.

Petition for a Writ of Certiorari to the Supreme Court of New Jersey

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MOTION OF NATIONAL LAWYERS GUILD FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

To the Honorable, The Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The National Lawyers Guild respectfully moves this Court pursuant to Rule 27, paragraph 9, of the Rules of this Court, for leave to file a brief in this case as *amicus curiae.**

The National Lawyers Guild is a bar association of national membership which is and has long been dedicated to the aim, among others, of helping to defend constitutional rights and liberties.

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* Consent of the parties has been sought but the Respondent has refused its consent.

The incidents upon which the order of disbarment in this case must rest are patently free of the taint of moral turpitude or venality which ordinarily provides the basis for such orders. The incidents themselves have been adjudged after hearing by a United States District Court Judge as not warranting disbarment. Yet disbarment from practice before the New Jersey State Courts results in the total elimination of the Petitioner from the practice of law.

The Petitioner was held in contempt and imprisoned for four months for these same incidents. This Court upheld the contempt sentence though Petitioner was denied a hearing by the sentencing judge. Now the Petitioner has been disbarred from practice in New Jersey without a hearing.

These are extraordinary, indeed unprecedented events in the annals of the American Bar. And we believe that if the order for which review is sought is allowed to stand a precedent will have been established which would serve inevitably to lessen the availability of counsel for the group in our country which is presently experiencing the greatest difficulty in securing counsel, and to make hazardous the zealous defense of members of that group. Accordingly, in our view, a vital aspect of the constitutional guarantee of a fair trial is at issue.

As standards applied in disciplinary proceedings are of national concern to the Bar, and as this case raises at least one novel and significant constitutional issue not discussed by the Petitioner, we seek leave to present our views on that issue in the hope that by so doing we may assist this Court.

Brief Statement of Argument Intended to be Made

We intend to argue, if the Court grants leave to file a brief *amicus curiae,* that the action here under review in purpose and effect deprives litigants in political trials of the right under the Due Process Clause of the Fourteenth Amendment to the full and unfettered representation by

counsel, and the coordinate and implementing right under that same Clause of the Fourteenth Amendment for counsel to represent litigants without regard to the defendant's philosophy or political beliefs.

As legislation may be reviewed to determine its actual rather than its stated purpose (*United States* v. *Butler*, 297 U. S. 1; *Bailey* v. *Drexel Furniture Co.*, 259 U. S. 20), so may the real import of judicial action be searched out, and particularly where civil rights and civil liberties are involved (see *Near* v. *Minnesota*, 283 U. S. 697, 708, 709).

In this case we believe, and if the application herein is granted, we will show, that the incidents which must be relied upon as the basis for this disbarment action are so few, isolated and insubstantial * as to lay no proper basis for the extreme penalty imposed; that consequently the action is arbitrary and probably attributable to the circumstance that the Petitioner chose to represent with vigor and diligence the leaders of the Communist Party charged with violation of the Smith Act; that an order of disbarment so based denies due process. Due to the difference in magnitude of punishment involved and the limited review allowed by this Court of the prior contempt order against the Petitioner and others, this issue was not previously considered.

We hold no brief for the Communist Party, its leaders, members, or objectives—but we do insist upon the right of any litigant charged with criminality, including leaders of the Communist Party, to a fair trial. And this right to a fair trial we think to be inextricably related to the guarantee that the counsel of such defendant will have every opportunity to represent the litigant as forcefully and aggressively as the needs of the case and reasonable propriety will demand and allow, *Powell* v. *Alabama*, 287 U. S. 45; *Avery* v. *Alabama*, 308 U. S. 444; *Hawk* v. *Olson*,

* See note 2, pages 10-11 of the Petition for Certiorari herein for a brief description of these incidents.

326 U. S. 271. No such assurance can be forthcoming to litigants unless counsel is, in turn, assured he will not be exposed to disbarment for the representation of a litigant in political trials upon the pretext of heated incidents which are inevitable in such trials.

We think that the coordinate rights of the litigant and the lawyer hereinabove set forth are both founded in the Due Process Clause of the Fourteenth Amendment and that both these rights are in grave jeopardy today. This jeopardy we think to be very seriously increased by the instant disbarment proceeding. As an association of lawyers greatly interested in preserving the rights of all to equal justice, we request the opportunity to submit a brief *amicus curiae* in the matter here under review.

CONCLUSION

It is respectfully requested that the National Lawyers Guild be granted leave to file a brief *amicus curiae* in support of the petition for writ of certiorari in this cause.

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